REMARKS/ARGUMENTS

Claims 1, 10-11, and 15 have been amended.

The amendments to claims 1, 11, and 15 are not meant to limit the claims, but rather to merely make explicit what was already implicit -- content of a "finance agreement" as defined in the specification.

Claim Rejections – 35 U.S.C. §112

The Examiner states that there is insufficient antecedent basis for the limitation "said patient's signature" as recited in claim 10.

-Response

Claim 10 has been amended. It is Applicants' position that the language "said patient's signature" as recited in claim 10 is not indefinite because the meaning of the claim term is discernible when read in light of the specification, which states at page 13 "[t]he agreement may be signed remotely . . ." *See Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004) (holding that the disputed claim term "surrender value protected investment credits" which was not defined or used in the specification was discernible and hence not indefinite because "the components of the term have well recognized meanings, which allow the reader to infer the meaning of the entire phrase with reasonable confidence"). Hence, Applicants have amended claim 10 in order to improve the clarity of the language used and the amendment is not meant to limit the claim.

Claim Rejections – 35 U.S.C. §102

Rejection over Klesse (U.S. Patent No. 5,583,760)

The examiner rejected claims 1, 6, 8 - 12, and 14 as being anticipated by Klesse (U.S. Patent No. 5,583,760). Applicants respectfully submit that the claims in their present form are allowable over the cited art.

-Response

In order to establish a case of *prima facie* anticipation of claims 1, 6, 8 -12, and 14 the examiner must establish that the references disclose every limitation of the claims either explicitly or inherently. *Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999).*

Claim 1 reads as follows:

A method for obtaining payment for services provided by a healthcare provider to a patient via a servicer, comprising:

said servicer receiving from said healthcare provider **an executed finance agreement** between said patient and said healthcare provider **executed without access to said patient's credit history** in which said patient agrees to make a periodic payment to said servicer **at a predetermined interest rate and for a predetermined duration of obligation**;

said servicer periodically sending to said patient a request for said periodic payment;

said servicer periodically receiving from said patient a payment; and,

said servicer periodically sending to said healthcare provider a portion of said collected payment.

Claim 11 reads as follows:

A system for obtaining payment for services provided by a healthcare provider to a patient via a servicer, comprising:

a finance agreement between said patient and said provider **executed without access to said patient's credit history, said finance agreement including the interest rate, the periodic payment amount, and the duration of obligation of said patient**;

a first transmission means for transmitting said executed finance agreement to said servicer;

a collection means for periodically collecting payment from said patient according to said finance agreement's terms; and,

a second transmission means for transmitting a portion of said periodically collected payment to said provider.

The examiner has not established a prima facie case of anticipation of claim 1 and the claims depending therefrom over Klesse because the examiner has not pointed to a teaching or suggestion in Klesse of a method for obtaining payment for services provided by a healthcare provider to a patient via a servicer comprising "said servicer receiving from said healthcare provider **an executed finance agreement** between said patient and said healthcare provider executed **without access to said patient's credit history** in which said patient agrees to make a periodic payment to said servicer **at a predetermined interest rate and for a predetermined duration of obligation**" as required by claim 1 (emphasis added).

The examiner interprets the creation of an account with a provider to be the same as a finance agreement between a patient and healthcare provider. Klesse teaches a system including a first step wherein

> "[a] physician, dentist or other provider of professional services ("provider") establishes an account for a new patient by providing **application data** to the system (step 100). The data includes the **patient's name, address, telephone number, insurance carrier (if any) and whether the account is a single or joint account.** The information is collected from the patient, typically by having the patient fill out a form, and is then transmitted electronically from the provider to the servicing company."

See Col. 3, ll. 2-10 (emphasis added). Klesse further teaches that

> "[t]he system **then accesses credit history information** concerning the patient from a national credit bureau (step 102), and compares the credit history data with predetermined credit criteria data to determine the creditworthiness of the new patient (step 104) . . . **Based on the results of the comparison of the credit history of the patient and the credit criteria data, a decision is made whether to create a funded or post-funded account** (step 106)"

See Col. 3, lines 11-15 and lines 24-27 (emphasis added).

As Klesse describes, the information transmitted to a servicing company simply includes the "patient's name, address, telephone number, insurance carrier (if any) and whether the account is a single or joint account." No obligation to pay or any other form of a debt instrument is created and transmitted from the provider to the servicing company. In fact, Klesse teaches that no decision is made "whether to create a funded or post-funded account" until the patient's credit history is compared with credit criteria data. Thus, if Klesse merely describes submitting application data to a servicing company prior to accessing credit history information in order to form an account, then the examiner has not pointed to a teaching or suggestion of "said servicer receiving from said healthcare provider an executed finance agreement between said patient and said healthcare provider executed without access to said patient's credit history in which said

patient agrees to make a periodic payment to said servicer **at a predetermined interest rate and for a predetermined duration of obligation**," as required by claim 1.

Similarly, the examiner has not established a prima facie case of anticipation of claim 11 and the claims depending therefrom over Klesse because the examiner has not pointed to a teaching or suggestion in Klesse of a system for obtaining payment for services provided by a healthcare provider to a patient via a servicer comprising "a finance agreement between said patient and said provider executed **without access to said patient's credit history, said finance agreement including the interest rate, the periodic payment amount, and the duration of obligation of said patient**" as required by claim 11 (emphasis added).

Thus, the examiner has not established that Klesse, discloses every limitation of the claimed invention either explicitly or inherently. *Atlas Powder Co. v. Ireco Inc., at, 1346, 51 USPQ2d at 1945 (Fed. Cir. 1999).* Applicants respectfully request that the rejection of claims 1 and 11 over Klesse be withdrawn.

Rejection of Dependent Claims 6, 8-10, 12 and 14

Claims 6 and 8-10 ultimately depend on claim 1. Thus, at least for the reasons set forth above with regard to claim 1, claims 6 and 8-10 are in condition for allowance.

Claims 12 and 14 ultimately depend on claim 11. Thus, at least for the reasons set forth above with regard to claim 11, claims 12 and 14 are in condition for allowance.

Claim Rejections – 35 U.S.C. §103

Rejection over Klesse in view of Whitney (U.S. Publ. No. 2002/0111901)

The examiner rejected claims 2, 4-5, 7, 15, 17 and 19 under 35 U.S.C. 103(a) as being unpatentable over Klesse in view of Whitney.

-Response

-Claims 2, 4, 5, and 7

Applicants explained above why Klesse does not anticipate claim 1 and the claims depending therefrom. The arguments apply equally well to claims 2, 4, 5, and 7 based on the 35 U.S.C. 103(a) rejection.

Applicants initially note that claims 2, 4, 5, and 7 ultimately depend on claim 1 which requires "said servicer receiving from said healthcare provider **an executed finance agreement** between said patient and said healthcare provider executed **without access to said patient's credit history** in which said patient agrees to make a periodic payment to said servicer **at a predetermined interest rate and for a predetermined duration of obligation**". Thus, at least for the reasons set forth above with regard to claim 1, claims 2, 4 - 5, and 7 are in condition for allowance.

-Claim 15

The examiner has not established a case of prima facie obviousness of claim 15 because the examiner has not pointed to a teaching or suggestion of "a method for collecting a self-pay/co-pay debt obligation owed to a healthcare provider by a patient using a servicer comprising:

said **healthcare provider executing a finance agreement** with said patient for said self-pay/co-pay obligation **without access to said patient's credit history**, said finance agreement including **the interest rate, the periodic payment amount, and the duration of obligation of said patient**;

said healthcare provider transmitting said finance agreement to said servicer;

said servicer sending a credit card styled request to said patient for payment according to said finance agreement's terms;

said servicer receiving said payment from said patient, wherein said payment comprises a principal portion and an interest portion; and,

said servicer transmitting said principal portion to said healthcare provider"

as required by claim 15 (emphasis added).

In order to establish that the claims are *prima facie* obvious over the prior art, the examiner must point to two things in the prior art, and not in the applicants' disclosure--(1) the suggestion of the invention, and (2) the expectation of its success. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). *See also* MPEP 2143. The examiner has not met this burden.

As stated above, the Klesse patent is directed to a system including a first step wherein

> "[a] physician, dentist or other provider of professional services ("provider") establishes an account for a new patient by providing application data to the system (step 100). The data includes the patient's name, address, telephone number, insurance carrier (if any) and whether the account is a single or joint account. The

> information is collected from the patient, typically by having the patient fill out a form, and is then transmitted electronically from the provider to the servicing company."

See Col. 3, ll. 2-10; and

> "[t]**he system then** accesses credit history information concerning the patient from a national credit bureau (step 102), and compares the credit history data with predetermined credit criteria data to determine the creditworthiness of the new patient (step 104) . . . **Based on the results of the comparison of the credit history of the patient and the credit criteria data, a decision is made whether to create a funded or post-funded account** (step 106)."

See Col. 3, lines 11-15 and lines 24-27 (emphasis added).

Likewise, the Whitney application is directed to "a system and method for facilitating the financing of a transaction between a vendor and a customer for goods and/or services" including

> (1) "origination of a loan by a traditional bank lender", Paragraph 0009, page 1, line 13;
>
> (2) "With the assistance of the qualified service provider, the client completes a loan application, which is submitted to the loan servicing company. **The loan servicing company compiles all necessary data required to underwrite the loan including . . . (iv) credit payment history**." Paragraph 0009, page 2, ll. 10-16 (emphasis added);
>
> (3) "If the bank approves the loan, then the client executes a note in favor of the lender"; Paragraph 0009, page 2, ll. 21-22.
>
> (4) "On behalf of the bank, the **loan servicing company** proceeds to collect on the loan from the client." Paragraph 0009, page 2, ll. 24-25 (emphasis added).

Thus, the examiner has not established a case of prima facie obviousness of claim 15 over Klesse in view of Whitney because the examiner has not pointed to a teaching or suggestion in the references of a method for collecting a self-pay/co-pay debt obligation owed to a healthcare provider by a patient using a servicer wherein "said healthcare provider executing a finance agreement with said patient for said selfpay/co-pay obligation **without access to said patient's**

credit history, said finance agreement including the interest rate, the periodic payment amount, and the duration of obligation of said patient" as required by claim 15.

-Claims 17 and 19

Claims 17 and 19 ultimately depend on claim 15. Thus, at least for the reasons set forth above with regard to claim 15, claims 17 and 19 are in condition for allowance.

Rejection over Klesse in view of Boyer et al. (U.S. Patent No. 6,208,973)

The examiner rejected claims 3 and 13 under 35 U.S.C. 103(a) as being unpatentable over Klesse in view of Boyer et al.

-Response

Applicants explained above why the Klesse patent does not anticipate claims 1, 11 and the claims depending therefrom. The argument applies equally well to the rejection of claims 3 and 13 based on the 35 U.S.C. 103(a) rejection.

Rejection over Klesse in view of Whitney and further in view of Freeman, Jr. et al. (U.S. Patent No. 6, 012,035)

The examiner rejected claims 16 and 20 under 35 U.S.C. 103(a) as being unpatentable over Klesse in view of Whitney and Freeman.

-Response

Applicants explained above why the examiner has not established a case of prima facie obviousness of claim 15. The argument applies equally well to the rejection of claims 16 and 20. Therefore, the examiner has not established prima facie obviousness over Klesse in view of Whitney and Freeman.

Rejection over Klesse in view of Whitney and further in view of Boyer et al.

The examiner rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Klesse in view of Whitney and Boyer et al.

-Response

Applicants explained above why the examiner has not established a case of prima facie obviousness of claim 15. The argument applies equally well to the rejection of claim 18. Therefore, the examiner has not established prima facie obviousness over Klesse in view of Whitney and Boyer et al.

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). The examiner clearly has not made the required particular findings as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected the claimed components for combination in the manner claimed. *In re Kotzab*, 55 U.S.P.Q.2d at 1317-1318. For all of the foregoing reasons, the examiner has not established a case of *prima facie* obviousness.

REQUEST FOR INTERVIEW

If any issues remain, the examiner is formally requested to contact the undersigned attorney prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Amendment so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused.

This request is being submitted under MPEP 713.01, which indicates that an interview may be arranged in advance by a written request.

CONCLUSION

For all of the foregoing reasons, Applicants respectfully request reconsideration and allowance of all of the pending claims.

Respectfully submitted,

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